

September 26, 2014

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-v-

Case No. 14-30493

KAI XU,

Defendant.

/

DETENTION HEARING

BEFORE THE HONORABLE DONALD SCHEER
UNITED STATES DISTRICT JUDGE

FRIDAY, SEPTEMBER 26, 2014

APPEARANCES:

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P R O C E E D I N G S

THE CASE MANAGER: Court calls case number 14-30493, United States of America versus Kai Xu.

MS. WOODWARD: Good afternoon, your Honor. Sara Woodward on behalf of the United States.

THE COURT: Good afternoon.

MS. WOODWARD: I have spoken with Mr. Chew's attorney. I know he's here. He may just be in the hallway. If you'd like me to --

THE COURT: If you would, please.

MS. WOODWARD: Thank you.

MR. DEBOLSKI: Good afternoon, your Honor. For the record, Tim Debolski appearing on behalf of the Defendant, who is to my left.

THE COURT: Thank you. Good afternoon. This is the date and time set for a detention hearing. Have counsel received copies of the pretrial services report and recommendation?

MS. WOODWARD: I have, your Honor.

MR. DEBOLSKI: Yes, I have, your Honor.

THE COURT: And the Government insists in detention request?

MS. WOODWARD: That is correct, yes.

THE COURT: Very well. You may proceed.

MS. WOODWARD: Thank you, Judge. I'm going to

1 proceed today by proffer, but I'm also going to be calling a
2 witness. Before I call the witness, I just wanted to make a
3 few remarks.

4 The Defendant here is charged in a complaint, as the
5 Court is aware, with crimes that include smuggling goods from
6 the United States and trading in specimens contrary to an
7 international treaty.

8 I do note that pretrial services in this case is
9 recommending that the Defendant be released on bond. And I
10 understand their reason for that. And that is because the
11 information that pretrial services has and that the Court has
12 up until this point relates to only really two incidents of
13 smuggling.

14 One that occurred on August 5th of this year. And
15 then the Court is familiar with the complaint for another
16 gentleman related to this Defendant from September 23rd and
17 24th of this year.

18 And if this case involved only the smuggling alleged
19 in those complaints, those two incidents of smuggling turtles
20 out of the United States, then I think that bond might be the
21 appropriate resolution here. However, as I will be presenting
22 to the Court, that is not all that this case involves.

23 As the Court will hear that Mr. Xu is a full time
24 reptile smuggler and this is not a mistake that he made once
25 or twice. It is a period of time of possibly years of

1 repeated conduct, repeated smuggling. And you will hear that
2 he has had packages intercepted by the authorities and he has
3 continued smuggling.

4 He, himself, has been caught body smuggling turtles
5 to Canada. And yet he has continued smuggling. And he has
6 also had runners that work for him caught and charged by the
7 Canadians, yet he has never even slowed down in his reptile
8 trade.

9 And you are also going to hear that this case
10 involves a great deal of money. It is not something I would
11 have known before I had this case or perhaps that most people
12 are aware, how valuable these turtles are. And you will hear
13 testimony from the agent to give us just an idea of the amount
14 of money that went into this very lucrative trade.

15 So that said, at this time I will call the Special
16 Agent Mona Iannelli from the United States Fish and Wildlife
17 Service.

18 THE COURT: Agent Iannelli, please come forward.
19 Will you raise your right hand.

20 Do you swear or affirm that the testimony you're
21 about to give in this cause will be the truth, the whole
22 truth, and nothing but the truth?

23 THE WITNESS: I do.

24 Thereupon,

25 **M O N A I A N N E L L I,**

1 having been called as a witness on behalf of the Government and
2 having been first duly sworn by the Court, was examined and
3 testified as follows:

4 THE COURT: Thank you. Please have a seat in the
5 witness stand, state your full name for the record, and spell
6 your surname.

7 THE WITNESS: My name is Special Agent Mona Iannelli
8 and the last name is spelled I-A-N-N-E-L-L-I.

9 THE COURT: You may proceed.

10 MS. WOODWARD: Thank you, Judge.

11 DIRECT EXAMINATION

12 BY MS. WOODWARD:

13 Q. Agent Iannelli, where are you employed?

14 A. I'm employed with the US Fish and Wildlife Service.

15 Q. And what is your job there?

16 A. I am a Special Agent criminal investigator.

17 Q. How long have you been a Special Agent with the US Fish
18 and Wildlife Service?

19 A. For a period of six years.

20 Q. And where are you currently based?

21 A. I'm currently based in Los Angeles, California.

22 Q. Have you been in Los Angeles for the six years you've been
23 with the Fish and Wildlife Service?

24 A. That is correct.

25 Q. And so what type of crimes do you investigate?

1 A. Out of the Los Angeles office, we primarily investigate
2 incidents of wildlife smuggling and other wildlife laws.

3 Q. And are you familiar with the investigation of the
4 Defendant Kai Xu?

5 A. I am.

6 Q. And do you see him in court today?

7 A. I do.

8 Q. All right. When did that investigation begin?

9 A. The investigation, my investigation into Mr. Xu began back
10 in March of this year.

11 Q. And how did that begin?

12 A. I was provided with some information by a confidential
13 informant that Mr. Xu was interested in various species of
14 turtles.

15 Q. And did you corroborate that information that you
16 received?

17 A. I did. Corroboration was done by myself with various
18 internet searching and then also speaking with my counterparts
19 up in Environment Canada.

20 Q. And what is Environment Canada?

21 A. Environment Canada is the wildlife enforcement agency for
22 the Canadian.

23 Q. Is it essentially your counterpart in Canada?

24 A. Correct.

25 Q. Do they also investigate criminal violations?

1 A. They do.

2 Q. And was Environment Canada familiar with Mr. Shoe?

3 A. They were. They informed me that they currently had an
4 investigation into him.

5 Q. And how long, if you know, had they been investigating Mr.
6 Xu's activity?

7 A. For at least a year.

8 THE COURT: Pardon me?

9 THE WITNESS: For at least one year.

10 THE COURT: Thank you.

11 BY MS. WOODWARD:

12 Q. And did they know him to use any aliases?

13 A. They did. They informed me that they knew he had over 20
14 aliases.

15 Q. But they knew his real name to be Kai Xu?

16 A. That is correct.

17 Q. Did you also learn that some individuals associated with
18 Mr. Xu had been arrested by Environment Canada?

19 A. Yes.

20 Q. Would you call those individuals runners?

21 A. Yes, I would.

22 Q. Okay. And can you tell us about one of those individuals?

23 A. One of the individuals was the name of Xin Hong Tong and
24 he was arrested by the Canadian Environment Canada officials in
25 July of last year, 2013, and was found to be smuggling live

1 turtles and tortoises and told Environment Canada that he was
2 paid by Mr. Xu.

3 Q. And what about a second individual?

4 A. One other individual, his name is Chaoyi Le also was
5 actually arrested on multiple times for smuggling into Canada
6 from the United States also telling Canadian officials that he
7 was paid by Mr. Xu.

8 Q. And these individuals were charged in Canada?

9 A. That is correct.

10 Q. And has one of them failed to appear?

11 A. Yes. At this time, Mr. Le is no where to be found.

12 Q. So the Canadians have not been able to locate him?

13 A. Correct.

14 Q. All right. And through the course of your initial
15 investigation, how did you learn or what did you learn about
16 how Mr. Xu set up his reptile purchases?

17 A. My understanding and through investigation is that Mr. Xu
18 would contact various turtle suppliers or individuals that had
19 turtles for sell by contacting them either through internet
20 websites dedicated to reptiles or by e-mail to inquire about
21 purchasing those reptiles.

22 Q. And did he use aliases when he did that?

23 A. Yes, he did.

24 Q. Now I'd like to talk a little bit about various packages
25 that you have knowledge of that are connected to Mr. Xu during

1 the course of your investigation. And I'd like to start by
2 directing your attention to April 22nd of 2014.

3 Are you familiar with a package that was shipped on
4 this day?

5 A. I am.

6 Q. And where was that shipped from?

7 A. That was shipped from Port Huron, Michigan.

8 Q. And was that shipped at a Fed Ex facility?

9 A. It was.

10 Q. And what happened to that package?

11 A. That package was seized.

12 Q. Where?

13 A. By foreign officials in China.

14 Q. And was that packaged opened?

15 A. Yes, it was.

16 Q. And what was inside?

17 A. It was found to contain live turtles and tortoises.

18 Q. And the name that shipped the package out, was that Kai
19 Xu's name?

20 A. No. An alias when been used.

21 Q. All right. How did you determine that Mr. Xu was
22 connected to this package?

23 A. I talked to employees from that store in Port Huron and
24 they remember Mr. Xu coming in and picking up a held for Kai Xu
25 package that day that contained turtles. And then he proceeded

1 to come back into the store less than a half an hour later to
2 ship a package.

3 Q. So you said there was a package at that facility held in
4 his name, his true name?

5 A. Correct. Correct.

6 Q. How is it that he has packages held with his real name but
7 would use an alias to ship a package out?

8 A. When --

9 MR. DEBOLSKI: Your Honor, I object. It's calling
10 for speculation.

11 THE COURT: Witness can testify as to what she knows
12 or what she has been heard -- what she has heard or learned in
13 the course of investigation. This being a preliminary
14 proceeding, hearsay is certainly admissible.

15 THE WITNESS: I was told by Fed Ex employees that any
16 packages that are held at a facility for pickup, you must
17 present identification to pick up a package. And so that
18 identification must match or closely match that name that is
19 on the package.

20 BY MS. WOODWARD:

21 Q. And is it your understand that when you ship a package
22 out, even internationally, you don't have to provide any
23 identification?

24 A. That is correct.

25 Q. Okay. During the course of your investigation, have you

1 also pulled or determined when Mr. Xu has crossed the border
2 from Canada into America?

3 A. Yes, I have.

4 Q. And how do you do that?

5 A. By contacting our other federal counterparts, the customs
6 and border protection. They are able to provide records of
7 every crossing that an individual has at every port of entry.

8 MS. WOODWARD: All right. Judge, I have Government's
9 Exhibit 1, which I have already provided to the defense that
10 I'm going to hand to the witness at this time and give to your
11 Honor, if that's all right.

12 BY MS. WOODWARD:

13 Q. I'm handing you what's been marked as Government's Exhibit
14 1. Can you tell us what this document is?

15 A. This is the border crossing history for Mr. Xu from, looks
16 like, September of 2012 until the end of August of 2014.

17 Q. All right. And so is there a column on this exhibit that
18 lists the date where -- a date where Mr. Xu would have crossed
19 over into America?

20 A. Yes.

21 Q. All right. And then do you also see in this column all
22 the way to the right a code?

23 A. Yes, I do.

24 Q. And does the third page of this document provide a
25 location that corresponds to those codes?

1 A. Yes.

2 Q. All right. So if we take a look, is there a crossing on
3 here for April 22nd of this year?

4 A. Yes, there is.

5 Q. All right. And then what is the crossing code on that
6 line?

7 A. On the crossing code on that line is Port Huron, Michigan
8 Blue Water passenger.

9 Q. Okay. So if we look at line 49, the border crossing code
10 is L 85 -- L 385 and that corresponds to Port Huron, Michigan?

11 A. That is correct.

12 Q. Okay. Now, let's talk about May 9 of this year, 2014.
13 Did you have an investigation related to another package on
14 this day?

15 A. I did.

16 Q. And did you, in fact, come to Michigan from California to
17 do surveillance on this day?

18 A. That's correct.

19 Q. All right. And so tell us what happened.

20 A. On May 9th, we had a package that we knew was being
21 delivered to Mr. Xu at the Fed Ex facility in Clinton Township
22 and we set up surveillance. Once we got to that Fed Ex
23 facility, we also learned that there was a second package that
24 was held for pickup for Mr. Xu.

25 We observed Mr. Xu pick up two packages from the Fed

1 Ex facility in Clinton Township and then proceeded to follow
2 him in a rolling surveillance. We followed Mr. Xu directly
3 from the Fed Ex facility to a UPS customer service center about
4 30 minutes away. And then observed him walk into the UPS
5 facility and pick up a package from there.

6 Q. And then what happened next?

7 A. At that point, Mr. Xu took the package into his vehicle
8 and proceeded to open the packages. We saw him discard some of
9 the packaging material in the UPS parking lot. He just threw
10 it on the ground.

11 We saw him basically making movements in the car that
12 looked consistent with possibly cleaning of the turtles. We
13 then saw Mr. Xu emerge from the vehicle carrying a pair of
14 boots, rubber boots and walked into the customer service
15 center.

16 Q. And what happened when -- next? Did he come back out of
17 the customer service center?

18 A. He did. He actually returned out of the customer service
19 center carrying the same pair of boots and then got into his
20 vehicle and drove away.

21 Q. Okay. And did you talk to the employee inside the store
22 to find out what happened?

23 A. I did. I contacted the employee immediately after Mr. Xu
24 drove away. And the employee informed me that Mr. Xu had
25 presented the boots and was looking to ship those boots to

1 China, but the store did not have a box big enough for them.

2 The employee also informed me that he had held the
3 boots and they were not empty. They had weight and were
4 consistent with not being empty boots.

5 Q. And after this, did you lose surveillance of Mr. Xu?

6 A. We did.

7 Q. And did you go to various other shipping stores to try to
8 find out where he could have gone to?

9 A. Yes. The UPS employee informed us that he suggested Mr.
10 Xu find another location to purchase a larger box. And we
11 began driving around to the local potential places that he
12 could ship from. And we did find another facility that
13 contacted him.

14 Q. And did you speak to an employee at this second facility?

15 A. I did.

16 Q. And what did he tell you?

17 A. That employee also told me that Mr. Xu had come in
18 carrying a pair of boots wishing to ship those to China and he
19 had provided him with a box. And upon receiving the paperwork
20 to ship the boots out, he had a declared value of less than a
21 hundred dollars on the paperwork.

22 And at that point the employee asked him how would
23 you like to ship this. And Mr. Xu requested that the package
24 be shipped overnight. And the employee informed him that that
25 would be very expensive, over \$400, and your boots are only

1 worth less than a hundred dollars. Are you sure? And he said
2 yes and had cash to pay.

3 At that point the employee told him to get out of the
4 store.

5 Q. And so he would refuse to ship the package?

6 A. He did. He refused to ship the package. And the employee
7 told me that he believed that there were drugs in the package.

8 Q. All right. Did you ever find out where Mr. Xu shipped the
9 package from on that day?

10 A. We did not.

11 Q. Now, let's talk about June 11 of this year. Was another
12 package related to Mr. Xu investigated on this day?

13 A. Yes, it was.

14 Q. All right. And where was this package sent to for pickup?

15 A. Will you repeat the date again?

16 Q. June 11 of 2014. And this day we're speaking about
17 another individual that picked up a package, not Mr. Xu.

18 A. Yes. That would be Mr. Yan.

19 Q. Can you say that name again for the Court?

20 A. Dong Yan.

21 Q. Is that Y-A-N?

22 A. Y-A-N, correct.

23 Q. Okay.

24 A. So on that date we also knew of a package that was to be
25 received by Mr. Yan in Buffalo, New York.

1 Now, this package was -- originally the package
2 contained turtles that an alias of Mr. Xu, an alias of Mr. Xu
3 had purchased from a cooperator. And that Mr. Xu's alias told
4 the cooperator that he would be shipping the package to
5 Buffalo, New York and to write down hold for pickup for Dong
6 Yan.

7 Q. And did you also go to New York on this day to do
8 surveillance?

9 A. I did.

10 Q. And did you observe Mr. Yan arrive at a facility in
11 Buffalo to pick up packages?

12 A. I did.

13 Q. And then what happened after he picked up the packages?

14 A. Mr. Yan picked up multiple packages at the Fed Ex facility
15 near the Buffalo airport. And he drove several blocks over to
16 a UPS facility and then parked next to a dumpster and began to
17 basically fidget, open boxes in his vehicle.

18 Q. Did Mr. Yan also ship an outbound package on this day?

19 A. He did. He ended up shipping two outbound packages to a
20 location in Florida and a location in North Carolina.

21 Q. Were those packages intercepted and searched pursuant to a
22 search warrant?

23 A. They were.

24 Q. And what were they found to contain?

25 A. They were found to contain 16 live Asian species of

1 turtles.

2 Q. And did you conclude that Mr. Yan had body smuggled those
3 from Canada to the United States?

4 A. We had.

5 Q. How did you conclude that?

6 A. Mr. Yan had discarded all of the trash and packaging that
7 he had from the packages that he had received at the Fed Ex
8 facility and placed them at the dumpster. We then recovered
9 that trash right after he deposited it.

10 And following that, after dropping off the two
11 domestic packages, a rolling surveillance was conducted where
12 Mr. Yan was observed the entire time as he drove back up
13 straight from the Fed Ex and UPS facility to the Canadian
14 border where he did stop momentarily and what appeared to
15 agents to be either strapping turtles to himself or into his
16 vehicle.

17 And we informed the Canadian authorities of this.
18 And Mr. Yan was ultimately found to be body smuggling 38
19 reptiles into Canada.

20 Q. So on this day we've been speaking about, just to clarify,
21 on June 11 of 2014, your investigation revealed that Mr. Yan
22 both body smuggled Asian turtles into the United States,
23 shipped them domestically, but also picked up a package in the
24 United States and then body smuggled North American turtles
25 back to Canada?

1 A. Correct. So the North American species were smuggled back
2 into Canada. And following the Canadians finding the 38
3 species, they were providing photos of the smuggling method,
4 which was Ziplock bags taped to the individual's legs. Upon
5 seeing those photos, I recognized the bags that I had recovered
6 in the trash at the UPS facility were the exact same --
7 appeared to be the same smuggling method. Also had tape on
8 them.

9 They had both the US -- or excuse me, English and
10 French writing on them, appearing to come from Canada.

11 Q. And then the connection to Mr. Xu from this date is based
12 at least in part on a cooperating informant?

13 A. That is correct.

14 Q. Now, let's talk about July of this year, on July 30th.
15 Was there an investigation related to another package on this
16 day?

17 A. Yes, there was.

18 Q. And was US Fish and Wildlife notified that there was a
19 package for pickup at the Detroit UPS for Kai Xu?

20 A. Yes.

21 Q. And did another agent conduct surveillance on this day?

22 A. Yes.

23 Q. And what did he see?

24 A. An agent on that day reported that he saw Mr. Xu pick up a
25 package from the Detroit UPS store and observed him throw out

1 trash from that package near the UPS store and then drive
2 directly to the tunnel and enter into Canada.

3 Q. All right. And did the agent see him stop and toss
4 garbage over a fence in Detroit?

5 A. Yes, he did.

6 Q. Okay. Let's talk now about August 5th of this year. This
7 is the date that is in the criminal complaint for Mr. Xu; is
8 that right?

9 A. That's correct.

10 Q. Okay. So what happened on this day?

11 A. On that date, I also received a call from a UPS employee
12 at that Detroit, Michigan location reporting that Mr. Xu had
13 another box for pickup.

14 Q. All right. And were you in Detroit on this day?

15 A. No, I was not.

16 Q. All right. But did other Fish and Wildlife agents conduct
17 surveillance?

18 A. Yes, they did.

19 Q. Did they see Mr. Xu arrive at the UPS facility and pick up
20 a package?

21 A. They did.

22 Q. Did they also see him repackage that in the parking lot?

23 A. They did.

24 Q. All right. And did they see him go to a concealed part of
25 the parking lot with a grocery bag and come back out ten

1 minutes later without that grocery bag?

2 A. Yes.

3 Q. And they also observed irregularly shaped bulges under his
4 sweatpants?

5 A. They did.

6 Q. And when Mr. Xu -- did they observe him go back to Canada
7 on this day?

8 A. They did.

9 Q. And was he sent to secondary on the Canadian side?

10 A. He was.

11 Q. And did the Canadians find he had 51 live turtles
12 concealed in his pants?

13 A. Yes.

14 Q. And those turtles were Eastern box turtles and red eared
15 sliders as well as diamondback terrapins?

16 A. Yes.

17 Q. Have you conducted an investigation into -- actually, let
18 me start over. If we take a look again at Government's Exhibit
19 1, which you have in front of you, and if we could take a look
20 at page 2, lines 58 to 64.

21 A. Yes.

22 Q. All right. According to this document, how many times did
23 Mr. Xu cross into America in August of this year?

24 A. According to this document, seven times.

25 Q. All right. And did he use the same border crossing each

1 time?

2 A. Yes, he did.

3 Q. And which border crossing was that?

4 A. That is the Detroit tunnel.

5 Q. And we see that looking at this document that he crossed
6 over on August 5th, and that's the day we were just speaking
7 about, correct?

8 A. That is correct.

9 Q. So that's the day that he was sent to secondary in Canada
10 and discovered to have 51 turtles --

11 A. Correct.

12 Q. -- in his pants? And then the next border crossing
13 through the tunnel is on August 8th; is that correct?

14 A. That's correct.

15 Q. So just three days later?

16 A. Yes.

17 Q. And then after that we see August 15. Do you see that?

18 A. Correct.

19 Q. And then August 20th, 22nd, 29th, and 30th are all
20 separate crossings, correct?

21 A. That is correct.

22 Q. Okay. Have you spoken to anyone from the UPS Troy
23 shipping facility?

24 A. I have.

25 Q. And have you learned that Mr. Xu or someone believed to be

1 Mr. Xu shipped international package from that location on some
2 of the dates that we just spoke about?

3 A. Yes.

4 Q. All right. Let's talk about August 8th. Did someone from
5 the Troy UPS say that Mr. Xu had shipped two packages to China
6 on that day?

7 A. Yes.

8 Q. Was it the same thing on August 15th, the same location?

9 A. Yes, two more packages.

10 Q. And then August 29th?

11 A. Two more packages.

12 Q. And that's, again, from the Troy UPS?

13 A. From the same location, yes.

14 Q. And then what about September 5th?

15 A. Yes, two more.

16 Q. And September's not on this document that we've been
17 speaking about. Why is that?

18 A. When I ran this document, I had -- I ran it on the 30th.
19 So I had up to date. I have not run it since then. But I have
20 received confirmation of his crossings by phone since then.

21 Q. Okay. So Exhibit 1 only has his crossings through August
22 30th, correct?

23 A. Correct.

24 Q. Have you spoken to UPS security about one of the packages
25 shipped from Troy on September 5th of this year?

1 A. Yes, I have.

2 Q. And what did you learn about one of those packages?

3 A. I learned that one of the packages had been seized by Hong
4 Kong customs.

5 Q. And was that packaged opened in Hong Kong?

6 A. It was.

7 Q. What did that package say on the outside about what it
8 contained, if you remember?

9 A. It did not say what it contained. But the declaration was
10 some sort of snow boot sample.

11 Q. All right. And what was actually found to be inside the
12 box?

13 A. Some snow boots with live -- with over 300 live turtles
14 inside of them.

15 Q. And have you received some pictures taken by Hong Kong
16 customs of that shipment?

17 A. I have.

18 MS. WOODWARD: Judge, I'm going to hand the witness
19 Government's Exhibit 4. The defense has a copy and I will
20 hand one to you as well.

21 BY MS. WOODWARD:

22 Q. Does Government's Exhibit 4 contain some of the
23 photographs taken by Hong Kong customs?

24 A. Yes, it does.

25 Q. And what do we see in those pictures?

1 A. Those are baby diamondback terrapin turtles.

2 Q. And are they inside of a snow boot?

3 A. Yes, they are.

4 Q. And if you flip through the pages, what other type of
5 turtles do we see?

6 A. I also see some red eared sliders, the yellow turtles in
7 there. Unfortunately this photo is not as good. But I see a
8 lot of diamondback terrapins.

9 Q. All right. And did Hong Kong determine how many turtles
10 were contained in that box?

11 A. Yes, they did. They said 317.

12 Q. Three hundred seventeen turtles?

13 A. Correct.

14 Q. And this may be difficult, but can you give us an idea of
15 the value of some of those turtles? And the value of those
16 turtles here in the United States.

17 A. All of the turtles have a little bit different value. But
18 for example, the yellow red eared slider turtles, those
19 currently going for about \$650 a piece is the purchase price.

20 Q. And that's here in the United States?

21 A. That is here in the United States.

22 Q. Would they be more valuable in China?

23 A. Yes, they would.

24 Q. Do you know how much more valuable?

25 A. Typically it's a multiplier of some sort. Depends on the

1 species. But if I was to venture a guess, two to three times
2 at least.

3 Q. And so is it fair to say that that particular package
4 intercepted by Hong Kong customs had a value here in the United
5 States of over \$30,000?

6 A. That would, yes, easily well over.

7 Q. Well over. And then a moment ago you and I spoke about
8 the Troy UPS. And was it your information that he had actually
9 shipped two packages to China on that day?

10 A. Yes, that is correct.

11 Q. But only one of them was intercepted by Hong Kong customs?

12 A. Correct. One made it through and the other one was
13 intercepted.

14 Q. So there presumably would have been another package
15 containing very valuable turtles on that day?

16 A. That's correct.

17 Q. All right. What about September 16, 2014, did you receive
18 information about a package that Mr. Xu sent on that day from
19 the United States?

20 A. I did. I found out that another package had been seized
21 by authorities in Anchorage, Alaska.

22 Q. And was that package -- were packages shipped by Mr. Xu
23 from the UPS store in Farmington, Michigan?

24 A. They were.

25 Q. Were there also two packages sent on that day?

1 A. Yes. Again two packages.

2 Q. And where were they headed for?

3 A. Both were headed for China.

4 Q. But you said one was intercepted in Alaska?

5 A. Correct.

6 Q. What happened?

7 A. In Alaska, the UPS store, which normally occurs in the
8 eastern half of the country, was actually conducted in Alaska
9 that day. And so as the packages were scanned for export,
10 which is a TSA scan, one of the security officials noticed the
11 boots in the package and that they -- that the boots were
12 giving off a heat signature.

13 And so they inspected the package and found the live
14 turtles inside.

15 Q. And again, this is just one of two packages shipped?

16 A. That's correct. The employee had remembered seeing just
17 prior a similar package with the same boots and had missed that
18 package and it was containerized before they could retrieve it.

19 Q. So when they opened the package that they did see the heat
20 signature on, what was inside?

21 A. The live turtles.

22 Q. And approximately how many turtles were in that package?

23 A. Over 200.

24 Q. And did that package contain diamondback terrapins?

25 A. It did.

1 Q. As well as North American wood turtles?

2 A. Yes.

3 Q. Loggerhead musk turtles?

4 A. Yes.

5 Q. Blanding's?

6 A. Yes.

7 Q. And kwangtung river turtles?

8 A. Correct.

9 Q. We've spoken about some of the values but we haven't
10 talked about kwangtung river turtles. What is the value of a
11 river turtle here in the United States?

12 A. Currently about 1,000 to 1,800 dollars.

13 Q. And how many, if you remember, kwangtung river turtles
14 were in that package?

15 A. I believe there was ten in that package.

16 Q. So just those alone would be valued well over \$10,000?

17 A. Correct.

18 Q. But there were over 100 diamondback terrapins in addition
19 to the other turtles we just spoke about?

20 A. Correct.

21 Q. Is there also an ornate box turtle in that package?

22 A. There was.

23 Q. All right. Now, let's speak about the most recent events
24 September 23rd to 24th. So earlier this week.

25 Were you here in the Eastern District of Michigan on

1 these days?

2 A. I was.

3 Q. And tell us about your investigation on these days.

4 A. Again, we knew of a package that was going to be held for
5 pickup by Mr. Xu at a different Fed Ex location in Novi. Novi,
6 Michigan. And I later learned that there was multiple packages
7 held for pickup by Mr. Xu there.

8 Q. And again, those packages were specifically held in his
9 name; is that correct?

10 A. Correct. At the UPS facility where it was held for Kai
11 Xu.

12 Q. Okay. And did you --

13 A. Excuse me. Fed Ex facility.

14 Q. Fed ex facility in Novi. Did you conduct surveillance at
15 the Fed Ex in Novi?

16 A. I did.

17 Q. And at some point that day did you see Mr. Xu pick up
18 those packages?

19 A. I did.

20 Q. What did you do next?

21 A. Mr. Xu picked up those packages and proceeded to drive to
22 a Clarion Hotel over by the airport at DTW.

23 Q. And then what happened after that?

24 A. Agents observed Mr. Xu place those packages that he had
25 just picked up from the Fed Ex facility and put them on the

1 luggage cart and take them into that hotel.

2 Q. And then what happened after he brought the packages into
3 the hotel?

4 A. He brought the packages into the hotel and checked into
5 two rooms.

6 Q. All right. And then at some point did Mr. Xu leave the
7 hotel?

8 A. He did. He left the hotel without any of the packages.

9 Q. All right. So he left the packages in the hotel room and
10 he went back to Canada; is that right?

11 A. That's correct. Surveillance ensued and he drove directly
12 back into Canada.

13 Q. And did surveillance follow him once he arrived in Canada
14 by Environment Canada?

15 A. Yes. Canadian Environment Canada officers picked up the
16 surveillance at the Canadian border and continued following him
17 into Windsor.

18 Q. And what did he do in Windsor?

19 A. In Windsor, he stopped at several ATM's and withdrew
20 money.

21 Q. All right. And then what did he do next?

22 A. He also picked up an individual.

23 Q. Where did he pick up this individual?

24 A. My understanding was in the university area, although I'm
25 not familiar with that area.

1 Q. And was that individual named Lihua Lin?

2 A. That is correct.

3 Q. And what did Mr. Xu do after he picked up Mr. Lin?

4 A. Mr. Xu also drove to a convenience store and then was --
5 and then drove back into the United States.

6 Q. Did he return to the hotel?

7 A. He did.

8 Q. And did he have Mr. Lin with him?

9 A. He did.

10 Q. And did Mr. Lin and Mr. Xu spend the night in the hotel?

11 A. They did.

12 Q. And then what happened the next day?

13 A. The next day, Mr. Lin and Mr. Xu came out of the hotel,
14 got into Mr. Xu's vehicle, and Mr. Xu drove directly to the
15 Detroit airport and dropped off Mr. Lin curbside at the
16 international terminal.

17 Q. And did Mr. Lin have luggage with him?

18 A. He did. He had two suitcases with him.

19 Q. Did Mr. Lin check those bags to China?

20 A. He did.

21 Q. Did he have a plane ticket to go to China that day?

22 A. He did.

23 Q. And did you search those suitcases?

24 A. We did.

25 Q. And what did you find inside the suitcases?

1 A. We found the suitcases to contain two pair of rubber snow
2 boots consistent with the other boots that we had seen. And
3 two contained 970 live turtles.

4 Q. And the turtles contained in those suitcases, did they
5 include diamondback terrapin?

6 A. They did.

7 Q. Over 700?

8 A. Seven hundred eighteen.

9 Q. Okay. And what else was -- what other species were in
10 those suitcases?

11 A. He also had spotted turtles, albino red eared slider
12 turtles, blanding's turtles, North American wood turtles, and
13 more kwangtung.

14 Q. And the kwangtung river turtles are the ones we discussed
15 earlier that are valued at 1,000 to 1,800 dollars each in the
16 United States?

17 A. That is correct.

18 Q. And how many did he -- how many were in that suitcase on
19 that day?

20 A. He had 16 of the kwangtung river turtles.

21 Q. Are the kwangtung river turtles native to the United
22 States?

23 A. No. They are from Asia.

24 Q. Are those turtles on the verge of extinction in Asia?

25 A. Yes, they are.

1 Q. But the other turtles that you mentioned, are those North
2 American species?

3 A. They are.

4 Q. Are you able to estimate the value in American dollars of
5 these turtles?

6 A. Yes. Some of them we've got some fairly good pricing on.

7 Q. Tell us what you can tell us about the prices.

8 A. Okay. For example, the North American wood turtles, there
9 was -- I believe 35 of them were adults. Those sell for
10 approximately \$500 a piece. The rest of the remaining 49 minus
11 35 were babies. And those sell for about 250 to 300 dollars a
12 piece.

13 The blanding's turtles, which there was 22 of them,
14 sell for about 250 to 300 dollars a piece. The albino red
15 eared sliders, which there was 56 of them, sell for \$650, which
16 we know Mr. Xu has paid for before.

17 That right there is over \$30,000. The diamondback
18 terrapins. The spotted turtles which we knew were in the
19 package, 50 of them, those were paid \$75 a piece for a value of
20 \$3,750. And then the remaining 60 of them were probably 75 to
21 a hundred dollars each as well.

22 Q. Okay. So safe to say tens of thousands of dollars worth
23 of turtles?

24 A. Very safe to say.

25 Q. All right. Was Mr. Xu arrested on this day by the US Fish

1 and Wildlife Service?

2 A. He was.

3 Q. And where was he arrested approximately?

4 A. My understanding was -- I was not present for that arrest.

5 But my understanding was on I-275.

6 Q. At some point after he dropped Mr. Lin off at the airport?

7 A. Correct.

8 Q. And when Mr. Xu was arrested, did he have US currency on
9 him?

10 A. He did.

11 Q. Approximately how much?

12 A. Over \$10,000.

13 Q. And did you learn that he had another package waiting for
14 him at pickup at a Fed Ex?

15 A. Yes. I learned from a Fed Ex employee that Mr. Xu had
16 another package for pickup at that same Fed Ex location in
17 Novi.

18 Q. All right. Mr. Lin was also arrested; is that correct?

19 A. Correct. He was arrested following the baggage
20 inspection.

21 Q. And have you had a chance to speak to Mr. Lin since his
22 arrest?

23 A. I have.

24 Q. And what did you learn about how he came to be here with
25 Mr. Xu?

1 A. Mr. Lin -- I learned that Mr. Lin had contacted Mr. Xu in
2 response to an offer for -- an ad for sell, help wanted. And
3 he had contacted him wanting to make some money. And he
4 thought he was going to be selling cosmetics.

5 Q. And did you learn from Mr. Lin that the ad was on a
6 Chinese Canadian forum?

7 A. That is correct.

8 Q. So was it in the Chinese language?

9 A. It was.

10 Q. And did that ad -- was that ad looking for people who
11 wanted to earn \$4,000 a month for four days of work?

12 A. Correct.

13 Q. Did Mr. Lin tell you he responded to that ad?

14 A. He did.

15 Q. And at some point he met Mr. Xu in Windsor?

16 A. Correct.

17 Q. And Mr. Lin is from what part of Canada?

18 A. From the Toronto area.

19 Q. So he traveled to Windsor to meet Mr. Xu?

20 A. He did.

21 Q. And what did Mr. Lin tell you he was going to be paid for
22 traveling to China with the turtles that you recovered?

23 A. Mr. Lin had \$500, or a little less, on him that he was
24 already paid for as a down payment by Mr. Xu. And he was
25 supposed to be paid \$2,000 additionally upon his return back to

1 the Detroit.

2 Q. For a total of \$2,500?

3 A. Correct.

4 Q. What did he tell you about how he made his travel
5 arrangements to China?

6 A. He told me that Mr. Xu ultimately paid for the plane fare.
7 He initially had paid for it, but Mr. Xu paid him back by
8 transfer into his wife's e-mail account.

9 Q. And did he tell you approximately what the price was of
10 that ticket to China?

11 A. He did. It was approximately \$1,700.

12 Q. And he was reimbursed for that plane ticket by Mr. Xu?

13 A. He was.

14 Q. And that's separate from the \$2,500 payment he was
15 promised?

16 A. Correct.

17 Q. Did Mr. Lin tell you about any conversations he had with
18 Mr. Xu about transporting these turtles to China?

19 A. He did.

20 Q. What did he say?

21 A. Mr. Xu had told Mr. Lin to not worry about it because they
22 only look for guns and drugs. And you're going outbound and
23 the US does not worry about outbound.

24 Q. And was Mr. Lin nervous about taking this trip?

25 A. He was.

1 MS. WOODWARD: All right, Judge. That concludes my
2 questions for this witness.

3 THE COURT: Thank you. You may cross-examine.

4 MR. DEBOLSKI: I just have a couple of questions,
5 Judge.

6 CROSS-EXAMINATION

7 BY MR. DEBOLSKI:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. I'm going to direct your attention to the September, I
11 believe it's September 23rd event that you just testified about
12 the suitcases that contain turtles that were on a plane going
13 to China.

14 A. Yes.

15 Q. Testifying to that, right?

16 A. Correct.

17 Q. Do you know whose suitcases those turtles were found in?
18 Who owned those suitcases?

19 A. The checked bags were Mr. Lin's. Mr. Lin told me that Mr.
20 Xu supplied one of them and he had supplied the other one.

21 Q. You also testified earlier you've been a special
22 investigator for six years?

23 A. That is just my -- as a Special Agent. I've been a law
24 enforcement officer longer.

25 Q. So how long have you been a police officer?

1 A. For about 15 years.

2 Q. You talk to a lot of different people that are involved in
3 smuggling, right?

4 A. Yes.

5 Q. A lot of them tell you a lot of different things; is that
6 right?

7 A. Yes.

8 Q. They say it's not mine, it's his?

9 A. I can't speak to what others --

10 Q. But in your own experience as a officer, have you had a
11 client tell you it's not mine, it was that person that just
12 bought it because I was doing a favor, I didn't own anything
13 was going to be in there?

14 A. Each case is entirely different.

15 Q. But it happens during your course of investigation?

16 A. I would need specific examples.

17 Q. Has it ever happened to you?

18 A. Not in the manner you're talking about, no.

19 Q. Well, how do you know which manner I'm talking about?
20 Have you ever been lied to by --

21 A. Absolutely.

22 Q. So it's possible Mr. Lin had lied to you?

23 A. Anything's possible.

24 Q. Now, you talked about earlier and I believe it was in July
25 you talked to two individuals who also named Mr. Xu as the

1 ringleader?

2 A. Correct. I didn't specifically speak with them.

3 Q. Is it also possible those people were lying to save
4 themselves?

5 A. Anything is possible.

6 Q. I mean, it's really incentive to be -- it's really
7 incentive to provide information so you can get a better deal;
8 is that correct?

9 A. I can't speak to what the individuals were thinking.

10 Q. But it happens, correct? Now, you also testified about
11 the different numbers of border crossings by Mr. Xu; is that
12 correct?

13 A. Correct.

14 Q. And I think in August you said there were approximately 8
15 to 12 border crossings?

16 A. Less than that.

17 THE COURT: Seven is my recollection.

18 THE WITNESS: Seven.

19 BY MR. DEBOLSKI:

20 Q. It's not illegal to go across the border to go shopping in
21 Somerset, is it, from Windsor?

22 A. Absolutely not.

23 Q. It's not illegal to cross over from Sarnia to go shopping?

24 A. No.

25 Q. Many people do it on a regular basis?

1 A. I would imagine so.

2 Q. You're in Los Angeles. I assume you have the same thing
3 in Mexico with that border.

4 A. We do.

5 Q. So the fact that Mr. Xu crosses over from Canada to the
6 United States, in and of itself there's nothing wrong with
7 that, right?

8 A. No. I'm just looking directly at the dates he's crossed.

9 Q. And I mean for a young kid -- well, you wouldn't know -- I
10 withdraw that.

11 Every time you talk to a different UPS or a different
12 Federal Express person, did you show any pictures of my client
13 to them?

14 A. On some occasions if I was present speaking with them in
15 present I did.

16 Q. Okay. And how many times were they able to say, yes, that
17 was my client that shipped this out?

18 A. Every time.

19 Q. Let me ask you --

20 MR. DEBOLSKI: I have no further questions. Thank
21 you.

22 THE COURT: Thank you. Redirect.

23 MS. WOODWARD: Yes. Thank you, Judge.

24 REDIRECT EXAMINATION

25 BY MS. WOODWARD:

1 Q. Mr. Xu's lawyer was just asking you some questions about
2 the suitcases that were checked at the airport and I neglected
3 to give the Court a copy of a picture here. I'm going to hand
4 you Government's Exhibit 2. Can you tell us what we see in
5 this picture?

6 A. This picture is a photo of the two suitcases at the top of
7 the photo that Mr. Lin had checked. And then we have all of
8 the turtles that were seized out of the suitcases. The two
9 cereal boxes on the bottom left hand corner contain the larger
10 turtles and some of the baby turtles. And then the rest of the
11 baby turtles were packed into those four snow boots.

12 Q. All right. And I see in this picture turtles are
13 separated into plastic tubs. Were those tubs the US Fish and
14 Wildlife tubs? Did you put them in the containers?

15 A. Correct. Those were ours after we had separated them.

16 Q. And are they separated by species?

17 A. They are.

18 Q. So the yellow ones that we see towards the upper right
19 hand corner, are those the albino red eared sliders?

20 A. They are.

21 Q. All right. I have another quick question for you about
22 whether Mr. Xu is a student in Canada. Have you reached out to
23 Canadian authorities to verify whether or not he's enrolled in
24 classes in Canada?

25 A. I have.

1 Q. And what have you learned?

2 A. I learned from my case -- co-case agent up in Canada that
3 he is not registered for this semester. He has not paid the
4 university any money and is not registered for any classes.

5 Q. I'm going to hand you Government's Exhibit 3. It's an
6 e-mail chain. Does it include an e-mail from you?

7 A. Yes, it does.

8 Q. And does it include an e-mail from a University of
9 Waterloo police service officer?

10 A. It does.

11 Q. And what does it state about Mr. Xu's enrollment status?

12 A. It says John, I have confirmed with the registrar's office
13 as well as the cooperative education office that Kai Xu, with a
14 student ID number and date of birth, is not enrolled for
15 classes or co-op for the fall 2014 September 2014 term.

16 His last co-op term was in the fall of 2013 September
17 13. And his last registered were winter of 2014 January 2014.

18 Q. Thank you. Mr. Xu's attorney asked you some questions
19 about whether or not it's illegal to come to the United States
20 and go shopping. Do you remember those questions?

21 A. I do.

22 Q. Now, when you and I were speaking on direct, you testified
23 about various times that you personally surveilled Mr. Xu
24 coming across the border and then returning to Canada?

25 A. Correct.

1 Q. Are there other occasions where other agents have
2 personally surveilled him coming into the United States and
3 then departing?

4 A. Correct.

5 Q. Have you or any of the other agents ever seen him go
6 shopping while he was here?

7 A. No, I have not.

8 Q. Have you ever seen him visit any family while he was here?

9 A. No.

10 Q. Have you seen him go anywhere except for to various
11 shipping facilities and at the hotel that you spoke about?

12 A. That is all.

13 Q. And you were also asked some questions about presenting
14 his picture to various employees of Fed Ex and UPS. Do you
15 remember those questions?

16 A. I do.

17 Q. What did those employees know Mr. Xu as?

18 A. Most of the employees that I showed the picture to
19 immediately were like, oh, that's turtle guy or turtle man.

20 Q. All right.

21 MS. WOODWARD: No further questions, Judge.

22 MR. DEBOLSKI: I just have a couple of questions,
23 your Honor.

24 RECROSS-EXAMINATION

25 BY MR. DEBOLSKI:

1 Q. When you contacted the University, did you find out
2 anything other than the fact that he was enrolled or not
3 enrolled? Did you determine how far he had gone in school?

4 A. I did not contact the University. I learned that from the
5 Canadians.

6 Q. Okay. Thank you.

7 THE COURT: You may step down. Thank you. Does the
8 Government have additional evidence or proffer?

9 MS. WOODWARD: Judge, I think I may have some facts
10 that I'll make reference to, but I think I can just do that in
11 argument. I don't need to do any additional witnesses or
12 proffer at this time.

13 THE COURT: Thank you. Does the Defendant have
14 evidence or proffer?

15 MR. DEBOLSKI: None, your Honor, at this time.

16 THE COURT: Thank you. Argument.

17 MS. WOODWARD: Thank you, Judge. I'll start with the
18 pretrial services report and I just want to point out that Mr.
19 Xu told pretrial services that he was currently a student in
20 Canada at Waterloo University and that he lived in the
21 dormitories there.

22 And I think it is simply important to note at the
23 outset that he is not currently a student and that is a
24 statement that's inaccurate that he gave to pretrial services.

25 And the other reason I think that that is a relevant

1 place to start is because Mr. Xu is not a student because he's
2 a full time reptile smuggler. We only have a snapshot of his
3 activities over the course of this last summer. But you heard
4 testimony here today about numerous different days where he
5 was either personally observed by Fish and Wildlife agents
6 picking up packages or where various packages were intercepted
7 by authorities that were shipped by him and all found to
8 contain live turtles.

9 We've heard that he has a variety of ways that he
10 ships his turtles. He, at times, has come to the United
11 States to pick up packages held in his name and repackaged the
12 turtles and shipped them directly to China from the United
13 States.

14 Other times he has picked up packages and then taken
15 the turtles and placed them into plastic bags and taped them
16 to his own legs and groin and body smuggled them back to
17 Canada.

18 And then his third method of smuggling is to use
19 other people, to hire runners to come and pick up his packages
20 and either reship them, as Mr. Yan did, or in the case of Mr.
21 Lin, get on a plane headed to China with 970 turtles in his
22 luggage.

23 He has had packages intercepted. He, himself, has
24 been arrested. And his runners have been arrested. Yet his
25 pattern has continued without slowing down in the slightest.

1 In Government's Exhibit 1, we see that he came to the United
2 States on seven different occasions in August. The first
3 occasion was August 5th, which was the day he was arrested by
4 Canadian authorities when he body smuggled turtles back to
5 Canada.

6 Yet a few days later he came back to the United
7 States and did so six more times in August. And we have no
8 reason to believe -- in fact, the evidence strongly suggests
9 otherwise -- that he does anything else when he comes to the
10 United States other than pick up packages and smuggle turtles
11 out.

12 He has put forth no legitimate reason that brings him
13 to this country. No family. No job. No friends. He comes
14 here and goes to UPS stores and Fed Ex facilities and picks up
15 turtles and then gets them out of the country in a variety of
16 ways.

17 And so at the beginning of this hearing I told the
18 Court that if this involved just the two incidents, perhaps
19 bond would be appropriate. And in fact, we agreed to bond for
20 Mr. Lin yesterday.

21 All of the evidence that the Fish and Wildlife has
22 investigated corroborates and suggests that Mr. Lin's
23 involvement in this was isolated to that one incident. But
24 all of the evidence points to Mr. Xu directing other people to
25 participate in his reptile smuggling and continuing to do it

1 for a very, very considerable amount of time for an extreme
2 amount of profit.

3 So, of course, there are factors for the Court to
4 consider. And the first thing to consider is the history and
5 characteristics of the person. Ask that's what I've been
6 talking around right here, the fact is that he is a reptile
7 smuggler who smuggles turtles in a variety of ways. And that
8 he comes to the United States solely for the purpose of
9 committing crimes.

10 We see on that exhibit the total number of times he's
11 come to America just this year alone. And if you look at the
12 exhibit, his first crossing is on January 3rd, and that's line
13 41. And through August 30th, we're up to line 64 for over 20
14 crossings, excluding the crossings that we know about in
15 September and the fact that obviously he was arrested here
16 just a few days ago. So probably closer to 30 crossings this
17 year alone.

18 And that makes him a flight risk. The fact that he
19 comes here to commit crimes and has no ties to the community
20 here makes him a flight risk. And there is absolutely no way
21 to supervise him in Canada.

22 The charges that he's facing are very serious. And
23 he did not know about the American investigation until now.
24 He did know that he had been apprehended by the Canadians and
25 some of his runners had, but he did not know about the

1 American charges and the American investigation which now
2 gives him a very strong incentive to flee.

3 And this is a man who is familiar with border
4 crossings, who is savvy with them, who has chosen various
5 ports or crossings in Michigan to utilize. And he is
6 certainly familiar with ways to avoid having to return to
7 court here.

8 And he has considerable financial resources. He was
9 arrested with \$10,000 in cash. Each of his various packages
10 that we've heard testimony about today, it's fair and probably
11 an underestimate to conclude that they're worth tens of
12 thousands of dollars. And often he would ship two packages at
13 the same time and only one of them on various times was
14 intercepted by the authorities.

15 He doesn't have employment. He's not really a
16 student. His employment is in the reptile trade. And he has
17 a very large financial resources.

18 Another factor for the Court to consider is his
19 record concerning appearances at court proceedings. And while
20 he's never failed to appear, it is important to know that he
21 committed these crimes in August and September of this year
22 after he had already been arrested and charged in Canada. And
23 that did not deter him.

24 That time that he was personally caught with turtles
25 taped to his legs did not slow him down in the slightest. And

1 that gives us insight into his respect for the law and how he
2 would respond to court imposed restrictions on his behavior.

3 And what this case is really about, Judge, is
4 something the Court does everyday, which is determine whether
5 someone is entitled to get bond. And when you release someone
6 on bond, you are saying to them that you trust them to return
7 to court and to follow the law.

8 And this Defendant is asking the Court to trust him
9 and to trust that he will follow your order and return to the
10 United States for court.

11 Yet his pattern of behavior is to come to this court
12 and commit crimes. So it is difficult to imagine that we can
13 trust him to follow the laws of our country and to follow this
14 Court's order to return when he has come here repeatedly and
15 often with the sole purpose of smuggling turtles out of the
16 country for a great deal of money and has been motivated by
17 greed.

18 There's no way for pretrial services to monitor his
19 computer behavior in Canada. There's no way for us to prevent
20 him from simply returning to any computer there and going on
21 reptile forums, recruiting new runners the same way he
22 recruited Mr. Lin with fraudulent promises and promises of
23 extreme amounts of money. And there's no way to prevent him
24 from ordering more turtles and sending runners here to
25 retrieve them.

1 And if he doesn't return to court, of course our
2 marshals can't retrieve him from Canada. And so if Mr. Xu
3 lived here in the United States and had family here, this
4 might be a different case.

5 But combined with the scope of his smuggling
6 operation, his financial resources, his zero ties to this
7 community, we simply cannot trust that he would return to
8 court here or that he would stop committing crimes. Thank
9 you.

10 THE COURT: Thank you. Defense argument.

11 MR. DEBOLSKI: Your Honor, I'm going to start with
12 the same proposition that counsel did with pretrial services.
13 Pretrial services, they're experienced in this matter more
14 than myself and more than counsel. They understand they had
15 an opportunity to talk to people that know my client.

16 They understand that my client was -- really the only
17 thing on his criminal record is an arrest in Canada for the
18 August 5th incident. They charged him in Canada and they
19 charged him in the United States. Outside of that, my client
20 has nothing on his record, your Honor.

21 As far as the schooling is concerned -- and I talked
22 to him about that. Because at first he told me that he was in
23 school. What he really wanted to say is that he took a class
24 that is going to begin in January and it's the one class he
25 needs to finish his degree. And he would like to get

1 employment in some field that's close to what he trained for
2 as an electrical engineer near.

3 Your Honor, there's nothing in the report that would
4 indicate my client would flee. As a matter of fact, if you
5 look, August 5th when he was arrested by Canada and released,
6 he could have just hopped on a plane and left at that
7 particular time if he wanted to. He didn't. My client wants
8 to put this behind him, your Honor. He wants to have his day
9 in court. There is a presumption of innocence.

10 A lot of the information that came out this afternoon
11 were from people that had some incentive to be dishonest to
12 this Court. One individual was charged yesterday. He was the
13 one that had the suitcases. What do you think he's going to
14 say? He's going to say it's my client that really was
15 responsible. There were two other individuals that said the
16 same thing. They have incentive to lie, your Honor.

17 I think if you look at my client from A to Z, you're
18 going to find a young man who's scared, frightened, doesn't
19 know what's going to happen to him. Your Honor, he's not
20 going to flee. He doesn't have the ability to flee. We'll do
21 whatever this Court orders.

22 We can put him on a GPS. Have the costs -- we'll
23 pick up the costs for that in Canada. He only comes to the
24 United States to meet with me or we can even restrict that so
25 if I need to meet with him I'll go to Canada.

1 Your Honor, this Defendant has a presumption of
2 innocence. And we have in court this afternoon his fiance and
3 I believe the fiance's mother. Your Honor, there is no risk
4 of flight here. He has a father that's very ill in Canada.
5 He only holds a Canadian citizenship. He does not hold dual
6 citizenship. He had to renounce his Chinese citizenship when
7 he became a Canadian citizen.

8 Your Honor, the bottom line is pretrial services took
9 all the information and felt comfortable that this Defendant
10 should be given a bond. And they felt comfortable knowing
11 that really the standard is twofold. Is he a flight risk and
12 is there an opportunity for him to danger the community?

13 Your Honor, I understand that this is a very, very
14 difficult case because it involves animals. And we're not
15 diminishing. We know that it's a very serious case. He's
16 never harmed anyone. He's not a violent person. He never
17 smuggled anything like drugs or anything like that, your
18 Honor.

19 I believe that he meets the standard of someone who
20 will come to court each and every court date. And I also
21 believe that he is no risk to the general public, your Honor.
22 For those reasons, I ask you to follow pretrial services
23 report and grant my client bond.

24 THE COURT: Thank you. Rebuttal?

25 MS. WOODWARD: Thank you, Judge. Of course, our

1 pretrial services here for this court cannot place Mr. Xu on a
2 tether in Canada. There's no way for them to monitor him in
3 Canada. It's not as if he's simply returning to another state
4 where we have pretrial services as part of -- as an arm of the
5 court there. So that is not a possibility to have a GPS
6 tether or any other sort of tether.

7 I was not here when Mr. Xu made his initial
8 appearance. But it's my understanding that he represented to
9 the Court on that day that he had some sort of final exam or
10 test that he needed to get out for, which, based on what we've
11 found out, appears to be absolutely untrue. And so he seems
12 to have a bit of a problem with the truth.

13 Defense counsel argued that he could have hopped on a
14 plane after he was arrested on August 5th in Canada. But of
15 course, he could have also stopped smuggling turtles in Canada
16 on that day and he might not be here and I might not be asking
17 for bond had he done that.

18 But he didn't because he didn't take the smuggling
19 laws seriously, although he knew it was illegal, which is why
20 he goes to such lengths to conceal the turtles. But he didn't
21 take it seriously. And perhaps the monetary incentive was
22 simply too large for him to stop smuggling turtles.

23 So you know, the trouble here is that this Defendant
24 has no family, no job, not a single tie to our district other
25 than to various Fed Ex and UPS facilities. Those are the only

1 people who know him here. And they know him as the turtle
2 guy.

3 And then he also has numerous border crossings that
4 we know about on Government's Exhibit 1. And he's utilized
5 those borders to violate the laws of three countries, America,
6 Canada, and China, by sending turtles to those places or
7 taking them out of the United States.

8 And so he's facing consequences for his actions.
9 He's been untruthful to the Court and to pretrial services.
10 And there's simply no way we can give him the sort of trust
11 that we give to other Defendants when we release them on bond.

12 THE COURT: Thank you. Pretrial, you have been
13 present for the hearing. Does your recommendation change?

14 MS. SHOCK: Yes, it does, your Honor. After hearing
15 what has been presented by the Government, which the
16 information is not privy to pretrial services at the time of
17 this interview, pretrial services is also extension of the
18 court and the Defendant blatantly lied to pretrial services
19 regarding his school attendance, his present address, as well
20 as his financial resources and ties, our recommendation does
21 change to detention.

22 THE COURT: Thank you. I will direct that pretrial
23 submit a supplemental report and recommendation. I will take
24 the evidence under advisement and issue an order prior to the
25 close of the business day.

1 My order is appealable by either party to the
2 presiding district judge. Thank you, very much.

3 (Proceedings Concluded)

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11 CERTIFICATE OF OFFICIAL COURT REPORTER

12 I, Jeseca C. Jacobs, Federal Official Court Reporter,
13 in and for the United States District Court Eastern District of
14 Michigan, appointed pursuant to provisions of Title 28, United
15 States Code, Section 753, do hereby certify the foregoing 55
16 pages are a true and correct transcript of the proceedings had
17 in the matter of UNITED STATES OF AMERICA versus KAI XU,
18 Case No. 14-30493 held on September 26, 2014.

19
20 S/ JESECA C. JACOBS
21 Jeseca C. Jacobs, RMR, CRR, FCRR
22 Federal Official Court Reporter

October 8, 2014
Date